

C H A P.
LXXX.

upon just cause being shewn, to suffer any proceeding by the plaintiff or the defendant to be corrected or altered, and also shall have full power and authority to make, and cause to be executed, such rules and orders in the case, and to direct such proceedings therein, as may be judged necessary and proper to bring the merits of the question between the parties fairly to trial; and in all such cases such judgment shall be given as if the action had been originally brought by the plaintiff or plaintiffs so appearing, or summoned to appear, as aforesaid, and the costs accruing before the death shall be taxed as part of the costs in the action; and if the person appearing as aforesaid, shall die before trial and judgment had in the case, the heir, devisee, executor or administrator, of the person so appearing as aforesaid, or the executor or administrator of the deceased, as the case may require, or other proper person to prosecute such suit, may appear or be compelled to appear as aforesaid, and there shall be such proceeding, judgment, and costs taxed as aforesaid, and so toties quoties until there be a trial and judgment had in the case; and in all cases of death of the plaintiff, after the appearance of the defendant's heir, devisee, executor or administrator, or other proper person to defend as aforesaid, and all cases of death of the defendant after appearance of the plaintiff's heir, devisee, executor, administrator, or other proper person to prosecute such suit, shall be taken and considered as within the meaning and provision of this act; and in case there be no appearance or proceeding by either party in any case aforesaid, before the tenth day of the second court after the death shall be suggested, then the action shall be struck off the docket and discontinued.

Actions, on the death of either party, the heir being an infant, shall not be tried, &c.

II. **Provided always, and be it enacted,** That in case any action be brought to recover any lands, tenements or hereditaments, or involve the title thereof, and upon the death of either plaintiff or defendant as aforesaid, the heir or devisee of the deceased, or other person interested in such lands, tenements or hereditaments, be an infant under the age of twenty-one years, and it shall so appear to the court, such action shall not be tried during such minority, unless the guardian, or next friend of such infant, satisfy the court that it will be for the benefit of the infant to have such action tried during such minority, but such action may be continued at the instance and request of the surviving party, until such infant arrives to the age of twenty-one years, and then such proceedings may be had to bring such action to trial and judgment, according to the nature of the case, as are herein before mentioned, or such surviving party may order the said action to be entered abated, if the court are not satisfied as aforesaid that it ought to be tried during the minority aforesaid.

Plea of non est factum shall not be received, &c.

III. **And be it enacted,** That the plea of non est factum shall not be received in any action brought, or hereafter to be brought, unless the party for whom such plea shall be tendered, verify the same by affidavit, or affirmation, as the case may be, to the truth thereof, or unless the defendant, being heir, executor or administrator, of the person alleged to have made the deed, obtain leave from the court, upon shewing just cause, to put in such plea.

Courts may order and allow amendments in all proceedings, &c.

IV. **And be it enacted,** That the courts of law shall have full power and authority to order and allow amendments to be made in all proceedings whatsoever before verdict, so as to bring the merits of the question between the parties fairly to trial; and if amendment is made after the jury is sworn, a juror shall be withdrawn, and in all cases where amendments are made, the adverse party shall have time allowed him, in the discretion of the court, to prepare to support his case upon the state of the proceeding so amended, and such costs shall be allowed the party against whom such amendment may be made as the court shall think just.

V. **And**